

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**7 CRIMINAL APPLICATION NO.509 OF 2023
IN APEAL/756/2018**

**BHANUDAS S/O. ASARAM KUMKAR
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr. Jadhav Satej S.
APP for Respondents/State : Mr. A.V. Deshmukh
...

**CORAM : SMT. VIBHA KANKANWADI &
Y.G. KHOBRADE, JJ.
DATE : 20th March, 2023**

PC. :-

1. Present application has been filed for suspension of substantive sentence imposed on the applicant/appellant by learned Additional Sessions Judge-3, Jalna in Sessions Case No.67/2015 on 20.06.2018. He has been held guilty of committing offence punishable under Section 302 of the I.P.C. and has been sentenced to suffer imprisonment for life and pay fine of Rs.10,000/- in default to suffer R.I. for six months. The present appellant is the original accused no.3 and the original accused nos.1 and 2 have also been sentenced similarly.

2. It will not be out of place to mention here that this is the second application for suspension of sentence filed by the present applicant, his

earlier application was rejected on merits, however, now he has filed the present application on medical grounds.

3. Heard Mr. Satej Jadhav learned advocate for the applicant and Mr. Deshmukh learned APP for the respondent-state.

4. The applicant is presently aged 73 as per his contention and it is stated that he is behind the bars since last almost eight years. His medical condition has deteriorated after he was operated upon for Cellulitis and was suffering from bradycardia and hypotension. He is also suffering from the problem of hearing. He has also developed chest pain and back problem. According to the applicant, he is unable to take care of himself and if he is released on bail, his family would look after him. The two other accused are his sons who are behind the bar. He was on Covid-19 parole and during that period also his medical condition was not proper.

5. Initially, when the application was filed, this Court by order dated 14.02.2023 found that since no documents in respect of the medical ground was attached, we have directed the Superintendent of Jail to get the applicant medically examined before the board, however, thereafter it was informed by the jail authorities that the applicant is on furlough leave and would surrender on 15.03.2023. On 09.03.2023, it was informed by the learned advocate that

the applicant is once again hospitalised and his date of surrender would be 15.03.2023. Today, the learned advocate for the applicant submits that though on the last occasion he had instructions about the hospitalisation of the applicant, he was not hospitalised, however, he was ill but then he made a statement that the applicant has surrendered before the jail authorities.

6. Today, the communication by Chief Medical Officer, Aurangabad Central Prison to the Superintendent of Jail dated 19.03.2023 was submitted, wherein, it was informed that for taking applicant for medical examination the escort was arranged on 17.03.2023, however, as the strike of the Government servants at Government Hospital is going on, the applicant could not be examined.

7. We called the report from the Chief Medical Officer, Aurangabad Central Prison regarding the status of health, as it was submitted on behalf of the applicant that even the daily routine is impossible for the applicant in jail. As per the report that is submitted by the Chief Medical Officer, the applicant is 75 year old person and he had fall in the month of January-2023. He is suffering from generalised weakness and previously he was admitted to the Govt. Medical College & Hospital w.e.f. 06.09.2022 to 06.10.2022 and he is under medication, however, in clear words it is stated that the applicant is a case of HypoThyroidism with Cardiogenic shock and he requires one

attendant for daily routine work. Under this circumstance, i.e. the weak condition of the applicant, it would be burdensome for the jail authorities also to keep his custody. No doubt a statement was made on behalf of the applicant that medical aid was not given to the applicant, though he was in need of it but then it is also the statement made that no male member is there in the family for which that treatment was not given, however, definitely the lady members in the family would look after the daily routine of the applicant, if he is released on bail. Under these changed circumstances, we allow the application with following conditions:

ORDER:

- I) The application stands allowed.
- II) The substantive sentence imposed by the learned Additional Sessions Judge-3, Jalna in Sessions Case No.67/2015 dated 20.06.2018 is hereby suspended till the hearing and final disposal of Criminal Appeal No.756/2018.
- III) Applicant-Bhanudas Asaram Kumkar be released on PR and SB of Rs.15,000/-.

[Y.G. KHOBRADE, J.]

[SMT. VIBHA KANKANWADI, J.]